

it therefore, becomes necessary to consider whether the cause shewn in answer to the *subpœna* can be deemed sufficient.

It is evident, as well from the pre-existing judicial institutions as from the general complexion of the course of proceedings in the now Orphans' Court, that those tribunals have been constituted after the manner, and are regulated by the principles of law derived from the Ecclesiastical Courts of England. And therefore, we shall be more likely to procure light and help from the course of proceeding in those English Courts, than from any other source.

The question here presented, is whether the written vouchers or proofs upon which an account has been settled in an Orphans' Court can be considered as parts of the records or proceedings of that Court? For if they do, then it is clear, that the register or keeper of them cannot be called upon to bring them before this or any other Court; because, as constituting a part of the public judicial records of the State, they cannot be removed from the place where they are by law directed to be kept; since copies of all such records are made legal evidence for every purpose, and those copies may be obtained by any one on paying the legal fees. It is however, urged, that even supposing they were required to be deposited with the register of wills for safe-keeping; yet he may be required to bring them into this Court, upon the same principle, that, in England, the register of the Ecclesiastical Court may be compelled to produce an original will.

A will is an instrument of a peculiar character. It is in some respects like a deed of gift, by which the title to property is passed from one to another without any valuable consideration. A deed of gift takes effect in the life-time of all concerned, who may see to \* its proper execution; but a will can only com-  
**479** mence its operation after the death of the donor. A last will is an instrument whereby the author makes a disposition of his property, most commonly, in separate parcels, in different estates, and to a variety of persons, among whom there are, or may be, mutual or conflicting interests to a considerable extent. A will always disposes of property, which, upon the death of its owner, would otherwise, according to its nature, be carried by operation of law in different directions. The personalty, which is the primary and natural fund for the payment of debts, would be placed in the hands of an administrator, who is considered in this Court as a trustee for the benefit of creditors and next of kin; and the realty would devolve upon the heirs. The will, in most respects, follows these different kinds of property, as if it were, in fact, a separate and distinct deed of gift of each. The same solemnities necessary to constitute a valid will disposing of real estate are not required to one which disposes of nothing more than personal property, or in so far only as it disposes of personalty. A